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EXAMINER

PIERCE, DAMON JOSEPH

ART UNIT

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3714

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/734,976	Applicant(s) GAUSELMANN, MICHAEL	
	Examiner DAMON PIERCE	Art Unit 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 December 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-16, 18-30 and 35-104 is/are pending in the application.
- 4a) Of the above claim(s) 9, 10, 12, 15, 16, 18-30, 35-98 and 100-102 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11, 13-14, 99, 103, and 104 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/31/09 has been entered.

Response to Amendment

2. The examiner acknowledges the amendments of claims filed on 12/31/09. Claims 1-8, 17, and 31-34 were previously cancelled. Thus, although claims 9-16, 18-30, and 35-104 are pending, claims 9-10, 12, 15-16, 18-30, 42-45, 48-53, 90-98, and 100-102 are withdrawn due to election, therefore, claims 11, 13-14, 38-41, 46-47, 84-89, 99, 103, and 104 are being examined on the merits.

Election/Restrictions

3. On Monday, May 24, 2010, the Examiner spoke with attorney, Horst Kasper regarding claims that correspond to elected species of Fig. 5. The attorney agreed that claims 48-49 and 90-96 correspond to Fig. 6; claims 50-53 correspond to Fig. 7; and claims 97-98 corresponds to Fig. 8; thus, claims 48-53 and 90-98 are withdrawn as belonging to a non-elected species, in addition, claims 42-45 corresponds to Fig. 4 and

are also withdrawn. Thus, claims 11, 13-14, 38-41, 46-47, 84-89, 99, 103, and 104 are related to the method disclosed in Fig. 5

Note, claims 42-45 contains subject matter including, determining if a special symbol combination in a branching block "Special symbol combination or jackpot winning value reached?" (49) has been reached, according to Fig. 4; claims 48-49 and 90-96 contains subject matter including, "Jackpot distribution game started?" (59)", according to Fig. 6; claims 50-53 contains subject matter including, "X-times played" (71), according to Fig. 7; and in addition, claims 97-98 contains subject matter including, "X-times played" (71), according to Fig. 8.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 11, 13-14, 38-41, 46-47, 84-89, 99, 103, and 104 are rejected under 35 U.S.C. 101 as being directed to non-statutory subject matter because these are method and process claims that do not transform underlying subject matter (such as an article or materials) to a different state or thing, nor are they tied to another statutory class (such as a particular machine). See *Diamond v. Diehr*, 450 U.S. 175, 184, (1981) (quoting *Benson*, 409 U.S. at 70); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978) (citing *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876)). See also *In re Comiskey*, 499 F.3d 1365, 1376 (Fed. Cir. 2007) (request for rehearing en banc pending).

Specifically, the claims fails to identify the apparatus that accomplishes the program and method steps, in this case, there is no apparatus stated in the claims to perform all the steps recited in the claims. For example, in claim 11, there is no apparatus positively recited for performing the following method steps, "randomly drawing all cards; determining if a game time has ended; and displaying winning values in case the game time has ended determining if a certain winning combination had been reached; randomly drawing again all cards if the certain winning combination had been reached; and determining again if the game time has ended if the certain winning combination had not been reached", such that the methods can be performed by a person or done by hand.

In addition, in claim 99 there is no apparatus positively recited for, "determining in the branching block "Key depressed ?" (40) if an operational element (3) was actuated; returning process to in front of the branching block "Game time ended" (39) in case no operational element (3) was actuated; determining in an operational block "Hold key " (42), if the operational element (3) actuated relates to holding a symbol card" (emphasis added), such that the methods can be performed by a person or done by hand. Please note: that the recitations of "operational block", "operational element", "branching block", "actualize intermediate state", "returning process", "performing a return from an operational block", and "entry block" are non-statutory subject matter.

Furthermore, the claims fails to provide a useful, concrete, and tangible result, in this case, there is nothing tangible stated in these claims to provide game players with awards, jackpots, or game play, such as a display, ticket, or the like.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 11, 13-14, 38-41, 46-47, 84-89, 99, 103, and 104 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 11, 13-14, 38-41, 46-47, 84-89, 99, 103, and 104, includes the limitations “operational block”, “operational element”, “branching block”, “actualize intermediate state”, “returning process”, and “performing a return from an operational block”, and in addition, there are questions asked within the claims, where the context used within the claims deems these limitations as unclear and ambiguous. For example, claim 99 includes the recitations, “determining in the branching block “Key depressed ?” (40) if an operational element (3) was actuated; returning process to in front of the branching block “Game time ended” (39) in case no operational element (3) was actuated; determining in an operational block “Hold key ” (42), if the operational element (3) actuated relates to holding a symbol card” (emphasis added). As best understood by the examiner, these recitations are expressing steps required to perform the game. It is recommended that the above mentioned claim language and the like be replaced with claim language such as --the method(s) of-- or --the step(s) of--.

Double Patenting

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8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

9. Claims 11 and 13-14 are provisionally rejected on the ground of nonstatutory double patenting over claims 1-68 of copending Application No. 09/491,779. Although the conflicting claims are not identical, they are not patentably distinct from each other because: claims 11 and 13-14 of instant application have word for word claims as related to claims 3 and 5-6 of appl. ‘779 with the exception of the automatic entertainment automat of instant application to automatic entertainment machine of appl. ‘779 (emphasis added); and in addition, claim 13 of instant application repeat steps previously stated in independent claims 11 of instant application and claim 3 of appl. ‘779.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

11. Claims 11 and 99 are rejected under 35 U.S.C. 102(e) as being anticipated by US Pat. #6,248,016 Walker et al (Walker).

Regarding claim 11, Walker discloses **a method for operating a coin actuated entertainment automat** (see Fig. 4, 100, discloses a gaming device which is interpreted as an entertainment automat) comprising

inserting payment into an automatic entertainment automat (Fig. 4, 118, discloses a coin/bill acceptor);

activating a game time after receiving the payment by the automatic entertainment automat (col. 2, 51-65, discloses a game of chance which is interpreted as activating a game time);

randomly drawing all cards (see col. 7, 29-39);

determining if a game time has ended (col. 7, 40-48, in this case, when a player has decided not to hold any cards of the poker hand the game time has concluded);

displaying winning values in case the game time has ended (Fig. 5, 545);

determining if a key has been depressed in case the game time has not yet ended (Fig. 5, 530);

determining if the depressed key is a hand out key or a hold key in case a key had been depressed (Fig. 5, 530);

randomly drawing cards not being held in case the hand out key had been depressed (Fig. 5, 535-540);

holding cards in case the hold key had been depressed (Fig. 5, 530);

actualizing an intermediate state (where CPU of the gaming device recognizes any state of game play within Fig. 5);

determining if a certain winning combination had been reached (see Figs. 4, 405, 410, and Fig. 5, 545);

randomly drawing again all cards if the certain winning combination had been reached (in this case, a player has achieved an winning poker hand combination and decides to play another game of draw poker);

determining again if the game time has ended if the certain winning combination had not been reached (in this case, a player decides whether or not to continue or end play of draw poker game based on hand).

Regarding claim 99, Walker discloses **a method for operating an entertainment automat system** (see Fig. 4, 100, discloses a gaming device which is interpreted as an entertainment automat) comprising

displaying symbol cards on a symbol card display device, wherein a displayed symbol card combination comprises a plurality of symbol cards (see Fig. 4, 410);

activating a game time on an entertainment automat (Fig. 5, 505, 515);

randomly drawing the plurality of symbol cards in an operational block "Randomly drawing all cards" (38) (see col. 7, 29-39);

connecting process from the operational block "Randomly drawing all cards" (38) to a branching block "Game time ended ?" (39) (col. 7, 40-48, in this case, when a player has decided not to hold any cards of the poker hand the game time has concluded);

presenting a winning amount in case a game time had ended (Fig. 5, 545);

connecting process from the branching block "Game time ended ?" (39) to a branching block "Key depressed ?" (40) in case the game time had not ended (Fig. 5, 530);

determining in the branching block "Key depressed ?" (40) if an operational element (3) was actuated (col. 7, 40-48);

returning process to in front of the branching block "Game time ended" (39) in case no operational element (3) was actuated (col. 7, 40-48, in this case,

when a player has decided not to hold any cards of the poker hand the game time has concluded);

determining in an operational block "Hold key " (42), if the operational element (3) actuated relates to holding a symbol card (Fig. 5, 530);

holding a designated symbol card in the operational block "Hold card" (46) in case the operational block "Hold key" (42) correspondingly directs (Fig. 5, 535 and col. 7, 49-53);

determining in an operational block "Hand out key" (41), if the operational element (3) actuated relates to handing out a symbol card (lacking distinguishing features, the draw/deal button of Fig. 4, 127 is interpreted as the hand out key);

handing out a random symbol card in the operational block "Randomly drawing of not held card" (43) in case the operational block "Hand out key" (41) correspondingly directs (col. 7, 54-61);

determining and displaying a winning value of the combination of symbol cards after the handing out of the random symbol card in an operational block "Actualize intermediate state" (44) connected to the operational block "Hold card" (46) and to the operational block "Randomly drawing of not held card" (43) (Fig. 5, 545);

checking in a branching block "Royal Flush reached" (45) connected to the operational block "Actualize intermediate state" (44) if the winning value of the combination of symbol cards is a maximum winning value (Fig. 4, 405, discloses a "Royal Flush" and see Fig. 5, 545);

returning process from the branching block "Royal Flush reached" (45) to in front of the operational block "Randomly drawing all cards" (38) in case the winning value is equal to the maximum winning value (Fig. 5, 550 to 515, in this case a player has achieved a Royal Flush then initiates a new draw poker game);

returning process from the branching block "Royal Flush reached" (45) to in front of the branching block "game time ended" (39) in case the winning value is not equal to the maximum winning value (Fig. 4, 405, discloses a "Royal Flush" and see Fig. 5, 545).

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

13. Claims 13-14, 103, and 104 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. #6,248,016 Walker et al (Walker) in view of Gauselmann

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(WO 97/49073), for purposes of this action, Examiner will use the patent (USPN 6,089,980), which is a translation of the PCT publication for Gauselmann. All citations will be made with reference to locations in the US Patent.

Regarding claims 13, 14, 103, 104, Walker discloses the method for operating a coin actuated entertainment automat according to claims 11, 99, 104 *except further comprising*

networking a second entertainment automat to the first entertainment automat;
determining which one of the entertainment automats assumes a master function
determining which one of the entertainment automats assumes a slave function;
collecting a jackpot amount in the operational block "Collecting the jackpot amount" (51);

determining if a jackpot filling level has reached a predetermined release amount;
returning process to inserting payment in an operational block "Insert payment"
(36) if it is determined that no jackpot amount has surpassed the jackpot release value
in the branching block "Jackpot amount has surpassed release amount ?" (52);

starting a jackpot game at the entertainment automat performing the slave function;

waiting till the slave is ready;
activating the game time for the entertainment automats;
collecting game results of the slave entertainment automat in the master entertainment automat;

distributing of the game results to the slave entertainment automat by the master entertainment automat;

collecting the jackpot amount in an operational block "Collecting the jackpot amount" (51) (as required by claims 13, 103, and 104); and

sending a readiness signal to the master entertainment automat;

waiting by the slave entertainment automat for an activation of the game time through the master entertainment automat (as required by claim 14).

However, Gauselmann discloses networking a second entertainment automat to the first entertainment automat (see Fig. 1, 1, 2a-d, 4, which discloses the automats connected in a network);

determining which one of the entertainment automats assumes a master function (col. 7, lines 13-18, discloses a gaming machine having a master function);

determining which one of the entertainment automats assumes a slave function (col. 7, lines 13-18, discloses gaming machines acting as slaves in a network);

collecting a jackpot amount in the operational block "Collecting the jackpot amount" (51) (see abstract);

determining if a jackpot filling level has reached a predetermined release amount (see abstract, jackpot trigger value);

returning process to inserting payment in an operational block "Insert payment" (36) if it is determined that no jackpot amount has surpassed the jackpot release value in the branching block "Jackpot amount has surpassed release amount ?" (52) (see abstract, where other games are played until jackpot level reaches a certain amount);

starting a jackpot game at the entertainment automat performing the slave function (see col. 3, 25-34);

waiting till the slave is ready (see col. 3, 25-34, where the game is not started until a game machine is ready to play game);

activating the game time for the entertainment automats (see col. 3, 25-34);

collecting game results of the slave entertainment automat in the master entertainment automat (col. 4, 64-67 to col. 5, 1-4);

distributing of the game results to the slave entertainment automat by the master entertainment automat (see col. 4, 7-10);

collecting the jackpot amount in an operational block "Collecting the jackpot amount" (51) (lacking distinguishing features, see col. 4, 7-10, where distribution of jackpot amount to a gaming machine is equivalent to a player collecting his/her jackpot amount);

sending a readiness signal to the master entertainment automat (see abstract and col. 4, 64-67 to col. 5, 1-5, where the master automat inherently receive signals);

waiting by the slave entertainment automat for an activation of the game time through the master entertainment automat (col. 5, 1-5).

The gaming system of Walker would have motivation to include the teachings of Gauselmann in order to add more excitement to playing a game via adding a jackpot element which would entice more players to play the game.

Thus, it would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the gaming system of Walker with the teachings of

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Gauselmann in order to entice more players to play a game, thus, increasing revenue that a game generates.

14. **Claims 38-41, 46-47, 84-89 are rejected under 35 U.S.C. 103(a) as being obvious over Gauselmann (WO 97/49073) in view of Walker et al. (US 6,248,016 B1).** For purposes of this action, Examiner will use the patent (USPN 6,089,980), which is a translation of the PCT publication. All citations will be made with reference to locations in the US Patent.

Regarding claims 38, Gauselmann discloses **a method of running a plurality of entertainment automats** (see Fig. 1) comprising

networking several coin actuated entertainment automats to each other (see Fig. 1, 1, 2a-d, 4, which discloses the automats connected in a network);

starting the entertainment automats to run;

determining which entertainment automat from entertainment automats assumes a master function within the network (col. 7, 13-18, discloses a gaming machine having a master function);

determining which entertainment automat from the entertainment automats assumes a slave function within the network (col. 7, 13-18, discloses gaming machines acting as slaves in a network);

monitoring the total playing time (lacking distinguishing features, see col. 8, 31-39, discloses a time period).

Gauselmann fails to explicitly disclose redrawing cards not held by cards randomly determined from the card storage.

Walker discloses redrawing cards not held by cards randomly determined from the card storage (Fig. 5, 530-535). The network of gaming machines of Gauselmann would have motivation to use video draw poker game play methods of Walker in order to attract players that enjoy playing poker.

Thus, it would have been obvious to a person of ordinary skill in the art at the time of the invention to combine the gaming machines of Gauselmann with the poker gaming methods of Walker in order to provide patrons with exciting game play required to win a payout.

39, Gauselmann teaches the method of running a plurality of entertainment automats according to claim 38 further comprising

collecting data relating to the games performed at the entertainment automats in the entertainment automat performing the master function (see col. 4, lines 64-col. 5, line 5);

accumulating part amounts in a jackpot in the entertainment automat performing the master function (see col. 3, 59-67-col. 4, 1-10);

feeding individual game results of each entertainment automat to the master entertainment automat (see col. 2, 44-49);

coordinating the entertainment automats present in the network by the master with respect to the collection of data of the jackpot amount through a counter state (see col. 3, 59-67-col. 4, 1-10);

calculating an actual jackpot value by the master (see col. 3, 59-67-col. 4, 1-10);

reaching or surpassing a jackpot release value (see col. 3, 59-67-col. 4, 1-10);

initiating a supplemental game in all running entertainment automats simultaneously upon the jackpot having reached the predetermined level (see abstract); and

switching simultaneously the coin actuated entertainment automats disposed in the network into a common supplemental game when a predetermined value of a common jackpot is surpassed (see abstract).

40, 41, 46, 47, **Gauselmann discloses** the method of running a plurality of entertainment automats according to claim 38 further comprising

inserting payment in an operational block "Insert payment" (36) into one of the entertainment automats for obtaining an active entertainment automat (as required by claims 40, 46) (abstract, discloses coin-operated gambling machines, where a payment of a coin is required in order to activate a gambling machine);

activating a game time in an operational block "Activating the game time" (37) of the active entertainment automat (as required by claim 40) (abstract, discloses coin-operated gambling machines, where once a payment of a coin is placed in a gambling machine game play time is allowed);

waiting for another insertion of payment (as required by claim 40) (abstract, discloses coin-operated gambling machines, where after game time is over another payment of a coin is required in order to activate a gambling machine);

starting a network in an operational block "Start of Network" (49) (as required by claim 46) (see Fig. 1, 1, 2a-d, 4, which discloses the automats connected in a network);

activating a base game in an operational block "Base game with payment insertion" (48) of the active entertainment automat (as required by claim 46) (abstract, discloses coin-operated gambling machines, where once a payment of a coin is placed in a gambling machine game play time is allowed);;

determining if a jackpot amount has surpassed a jackpot release value in a branching block "jackpot amount has surpassed release amount ?" (52) (as required by claim 46) (see abstract, jackpot trigger value);

returning process to inserting payment in an operational block "Insert payment" (36) if it is determined that no jackpot amount has surpassed the jackpot release value in the branching block "Jackpot amount has surpassed release amount ?" (52) (as required by claim 46) (see abstract, where other games are played until jackpot level reaches a certain amount);

starting the slave entertainment automat with the jackpot game in an operational block "Jackpot game starts at all slaves" (53) if it is determined that the jackpot amount has surpassed the jackpot release value in the branching block "Jackpot account has surpassed release amount ?" (52) (as required by claim 46) (see abstract);

waiting till the slave entertainment automat in an operational block "Wait till all slaves are ready" (54) is ready (as required by claim 46) (see col. 5, 1-5);

activating a game time in an operational block "Activate the game time for all machines" (37) of the slave entertainment automat (as required by claim 46) (see col. 5, 1-5);

collecting the individual result in operational block "Collecting the individual results" (55) of the slave entertainment automat if the game time is determined to be ended (as required by claim 46) (col. 4, 64-67 to col. 5, 1-4);

distributing of the sum of the individual result in an operational block "Distribution of the sum of the individual results to slaves" (56) to the slave entertainment automat (as required by claim 46) (see col. 4, 7-10);

calculating a winning amount in an operational block "Calculating winning amounts" (57) (as required by claim 46) (see col. 9, line 44);

presenting the winning amount on a display in an operational block "Presentation of winning amount" (58) (see col. 9, 54-56).

Gauselmann fails to explicitly disclose the following claim limitations:

randomly drawing all cards in an operational block "Randomly drawing all cards" (38) of the active entertainment automat (as required by claims 40, 46);

determining if a game time has ended in a branching block "Game time ended ?" (39) at the active entertainment automat (as required by claims 40, 46).

determining if a key is depressed in a branching block "Key depressed ?" (40) in case it was determined that the game time had not been ended (as required by claims 41, 47);

returning process to determining if the game time is ended in a branching block "Game time ended?" (39) in case it is determined that no key was depressed (as required by claim 41, 47);

randomly drawing a card not yet held in operational block "Randomly drawing of not held card" (43) if it is determined in the branching block "Key depressed ?" (40) that the hand out key in the operational block "Hand out key" (41) was depressed (as required by claims 41, 47);

holding a card in an operational block "Hold card" (46) if it is determined in the branching block "Key depressed ?" (40) that the hold key in the operational block "Hold key" (42) was depressed (as required by claims 41, 47);

actualizing an intermediate state in the operational block "Actualize intermediate state" (44) (as required by claims 41, 47);

determining if a Royal Flush in a branching block "Maximum winning value" (45) has been reached (as required by claims 41, 47);

returning process to randomly drawing all cards in an operational block "Randomly drawing all cards" (38) of the active entertainment automat in case a Royal Flush in the branching block "Maximum winning value" (45) has been reached (as required by claims 41, 47); and

returning process to determining if the game time is ended in the branching block "Game time ended ?" (39) in case no Royal Flush (45) in the branching block "Maximum winning value" has been reached (as required by claims 41, 47).

Walker discloses the following claims limitations:

randomly drawing all cards in an operational block "Randomly drawing all cards" (38) of the active entertainment automat (as required by claims 40, 46) (see abstract, and col. 1, 15-25, discloses a draw poker with initial cards randomly chosen);

determining if a game time has ended in a branching block "Game time ended ?" (39) at the active entertainment automat (as required by claims 40, 46) (see abstract, which discloses a final hand, where a final hand determines if the game has ended);

determining if a key is depressed in a branching block "Key depressed ?" (40) in case it was determined that the game time had not been ended (as required by claims 41, 47) (Fig. 5, 530);

returning process to determining if the game time is ended in a branching block "Game time ended?" (39) in case it is determined that no key was depressed (as required by claim 41, 47) (in this case, the gaming machine determines if this is the final hand);

randomly drawing a card not yet held in operational block "Randomly drawing of not held card" (43) if it is determined in the branching block "Key depressed ?" (40) that the hand out key in the operational block "Hand out key" (41) was depressed (as required by claims 41, 47) (col. 7, 54-61);

holding a card in an operational block "Hold card" (46) if it is determined in the branching block "Key depressed ?" (40) that the hold key in the operational block "Hold key" (42) was depressed (as required by claims 41, 47) (Fig. 5, 530);

actualizing an intermediate state in the operational block "Actualize intermediate state" (44) (as required by claims 41, 47) (where CPU of the gaming device recognizes any state of game play);

determining if a Royal Flush in a branching block "Maximum winning value" (45) has been reached (as required by claims 41, 47) (Fig. 4, 405, discloses a "Royal Flush" and see Fig. 5, 545);

returning process to randomly drawing all cards in an operational block "Randomly drawing all cards" (38) of the active entertainment automat in case a Royal Flush in the branching block "Maximum winning value" (45) has been reached (as required by claims 41, 47) (Fig. 4, 405, discloses a "Royal Flush" and see Fig. 5, 545);
and

returning process to determining if the game time is ended in the branching block "Game time ended ?" (39) in case no Royal Flush (45) in the branching block "Maximum winning value" has been reached (as required by claims 41, 47) (Fig. 5, 550 to 515, in this case a player has achieved a Royal Flush then initiates a new draw poker game).

The network of gaming machines of Gauselmann would have motivation to use video draw poker game play methods of Walker in order to attract players that enjoy playing poker.

Thus, it would have been obvious to a person of ordinary skill in the art at the time of the invention to combine the gaming machines of Gauselmann with the poker gaming methods of Walker in order to provide patrons with exciting game play required to win a payout.

84, 85, 86, 87, 88, 89, **Gauselmann discloses** the method according to claim 38, further comprising

actuating a power switch of each entertainment automat (1) (as required by claims 84, 89) (Fig. 2, 28, and col. 34-61, discloses a power amplifier, furthermore, electronic gaming machines inherently have power switches in order to generate power to the gaming device);

initiating a network of entertainment automats associated with the operational block "Start of network" (49) (as required by claims 84, 89) (see Fig. 1, 1, 2a-d, 4, which discloses the automats connected in a network);

assuming of a master function by one of the entertainment automats (1) (as required by claims 84, 89) (col. 7, lines 13-18, discloses a gaming machine having a master function);

switching remaining entertainment automats (1) present in the network to a slave function (as required by claims 84, 89) (col. 7, lines 13-18, discloses gaming machines acting as slaves in a network);

coordinating of the entertainment automats (1) present in the network with respect to a collection of data through a counter state of a jackpot amount according to

the master function (as required by claim 84) (see abstract, col. 3, 59-67-col. 4, 1-10, and col. 4, lines 64-col. 5, line 5, which discloses a master machine monitoring jackpot amount and requesting data from slave machines);

releasing of a common special game, which takes place at all entertainment automats (1) present in the network at the same time (as required by claim 84) (col. 2, 35-37, discloses an identical game sequence is started at the same time in all linked gambling machines);

randomly determining a symbol combination in the operational block "Base game with payment insertion" (50) in case of a sufficient credit balance state (as required by claims 84, 89) (col. 5, 34-47, explicitly discloses a symbol combination);

displaying the symbol combination in a symbol display device (2) (as required by claims 84, 86, 89) (col. 5, 34-47, explicitly discloses a symbol combination);

transferring, an adjustable shared part amount of the game stake of each base game to a common jackpot counter associated with an operational block "Collecting the jackpot amount" (51) (as required by claims 84, 89) (col. 3, 59-67);

checking, a counter state of the common jackpot counter in the operational block "Collecting the jackpot amount" (51) following to a determination of the winning value in the base game (as required by claim 84) (col. 3, 59-67-col. 4, 1-10);

sending a control signal from the master entertainment automat (1) associated with operational block "Jackpot game starts at all slaves" (53) to all other entertainment automats (1) present in the network if a predetermined jackpot counter state is reached or surpassed (as required by claim 84) (col. 2, 35-37);

switching the slave entertainment automats (1) to a special game based on a control signal after termination of the base game (as required by claim 84) (col. 2, 35-37);

monitoring in the operational block "Wait till all slaves are ready" (54), if an okay signal was returned by all slave entertainment automats (1) (as required by claim 84) (col. 2, 35-37);

starting a special game at the same time in all participating coin actuated entertainment automat (1) (as required by claim 84) (col. 2, 35-37).

activating the entertainment automat (1) in case of a credit balance state exhibiting a game stake (as required by claim 85) (see col. 3, 25-34);

monitoring a total game time by the operational block "Activate the game time for all machines" (37) (as required by claim 85) (lacking distinguishing features, see col. 8, 31-39, discloses a time period);

randomly determining winning symbols by the control unit (7) (as required by claim 85) (see col. 5, 44-47);

wherein the slave function comprises essentially that predetermined data are transmitted continuously to the master after request (as required by claim 89) (col. 4, 64-67 to col. 5, 1-4);

scanning individual results of the slave entertainment automat (1) by an operational block "Collecting the individual results" (55) by the entertainment automat (1) turned master in case of an ended game time (as required by claim 88) (col. 4, 64-67 to col. 5, 1-4);

accumulating incoming game results by the master entertainment automat (1)
(as required by claim 88) (col. 4, 64-67 to col. 5, 1-4);

communicating the incoming game results to the slave entertainment automats
(1) in operational block "Distribution of the sum of the individual results to slaves" (56)
(as required by claim 88) (see col. 4, 7-10);

determining a winning value in an operational block "Calculating winning
amounts" (57) (as required by claim 88) (see col. 9, line 44);

displaying the determined winning value in operational block "Presentation of
winning amount" (58) with the coordinated display means (21) of the respective
entertainment automat (1) (as required by claim 88) (see col. 9, 54-56);

performing a return from an operational block "Presentation of winning amount"
(58) displaying the winning value to an operational block "Base game with payment
insertion" (50) checking the game stake (as required by claim 88) (see col. 9, 54-56).

Gauselmann fails to explicitly disclose the following claim limitations:

*displaying winning symbols with operational block "Randomly drawing all cards"
(38) and a symbol display device (2) within a total game time (as required by claim 85);*

*activating a branching block "Game time ended ?" (39) determining the
remaining residual game time by the operational block "Randomly drawing all cards"
(38) (as required by claim 85);*

*checking in a branching block "Key depressed ?" (40), if an operational element
(3) disposed on the front side of the entertainment automat (1) was actuated in case of
a presence of a remaining residual game time (as required by claim 85);*

performing a return to the branching block "Game time ended ?" (39) if no operational element actuation took place in case of a presence of a remaining residual game time (as required by claim 85).

checking which operational element (3) was actuated in case of actuation of the operational element of entry block "Hand out key" or "Hold key" (41, 42) (as required by claim 86);

displaying five next to each other disposed card symbols with the symbol display device (2) in case of actuation of an operational element according to entry block "Hand out key" (41), wherein the symbol storage comprises 20 card symbols, namely ten, Jack, Queen, King, and ace in each case in all four colors (as required by claim 86);

redrawing cards not held by new cards randomly determined from the card storage in the operational block "Randomly drawing of not held card" (43) (as required by claim 86);

determining in the branching block "maximum winning value" (45), if the maximum winning value is displayed with the symbol display device (as required by claim 86) (2);

performing a return from the branching block "maximum winning value" (45) to the branching block "Game time ended ?" (39) in case of a non-reaching of the maximum winning value, wherein the game time is checked in the branching block "Game time ended ?" (39) (as required by claims 86, 87);

performing a return from the branching block "maximum winning value" (45) to the operational block "Randomly drawing all cards" (38) (as required by claim 87);

randomly determining new winning symbols in the operational block "Randomly drawing all cards" (38) (as required by claim 87);

displaying the new winning symbols with the symbol display device (2) (as required by claim 87);

holding winning symbols displayed with the symbol display device (2) in operational block "Hold key" (42) and in operational block "Hold card" (46) in the following by actuating the operational element (34) (as required by claim 87); or

throwing out all up to now held cards by actuating the entry block "Hand out key" (41) (as required by claim 87);

checking in the branching block "Game time ended" (39), if the game time has ended (as required by claim 87).

Walker discloses the following claim elements:

displaying winning symbols with operational block "Randomly drawing all cards" (38) and a symbol display device (2) within a total game time (as required by claim 85) (see abstract, and col. 1, 15-25, discloses a draw poker with initial cards randomly chosen);

activating a branching block "Game time ended ?" (39) determining the remaining residual game time by the operational block "Randomly drawing all cards" (38) (as required by claim 85) (see abstract, which discloses a final hand, where a final hand determines if the game has ended);

checking in a branching block "Key depressed ?" (40), if an operational element (3) disposed on the front side of the entertainment automat (1) was actuated in case of

a presence of a remaining residual game time (as required by claim 85) (see Fig. 4, 125A-125E);

performing a return to the branching block "Game time ended ?" (39) if no operational element actuation took place in case of a presence of a remaining residual game time (as required by claim 85) (see abstract, which discloses a final hand, where a final hand determines if the game has ended);

checking which operational element (3) was actuated in case of actuation of the operational element of entry block "Hand out key" or "Hold key" (41, 42) (as required by claim 86) (Fig. 2, 125, discloses hold keys within a gaming machine);

displaying five next to each other disposed card symbols with the symbol display device (2) in case of actuation of an operational element according to entry block "Hand out key" (41), wherein the symbol storage comprises 20 card symbols, namely ten, Jack, Queen, King, and ace in each case in all four colors (as required by claim 86) (lacking distinguishing features, see abstract, which discloses replacing discarded cards with new cards);

redrawing cards not held by new cards randomly determined from the card storage in the operational block "Randomly drawing of not held card" (43) (as required by claim 86) (see abstract, which discloses cards not held are discarded);

determining in the branching block "maximum winning value" (45), if the maximum winning value is displayed with the symbol display device (2) (as required by claim 86) (Fig. 4, 405, discloses a "Royal Flush" and see Fig. 5, 545);

performing a return from the branching block "maximum winning value" (45) to the branching block "Game time ended ?" (39) in case of a non-reaching of the maximum winning value, wherein the game time is checked in the branching block "Game time ended ?" (39) (as required by claims 86, 87) (Fig. 4, 405, discloses a "Royal Flush" and see Fig. 5, 545 and see abstract, which discloses a final hand, where a final hand determines if the game has ended);

performing a return from the branching block "maximum winning value" (45) to the operational block "Randomly drawing all cards" (38) (as required by claim 87) (Fig. 4, 405, discloses a "Royal Flush" and see Fig. 5, 545 and col. 1, 15-25, discloses a draw poker with initial cards randomly chosen);

randomly determining new winning symbols in the operational block "Randomly drawing all cards" (38) (as required by claim 87) (col. 1, 15-25, discloses a draw poker with initial cards randomly chosen);

displaying the new winning symbols with the symbol display device (2) (as required by claim 87) (col. 1, 15-25, discloses a draw poker with initial cards randomly chosen);

holding winning symbols displayed with the symbol display device (2) in operational block "Hold key" (42) and in operational block "Hold card" (46) in the following by actuating the operational element (34) (as required by claim 87) (see Fig. 5, 530-540); or

throwing out all up to now held cards by actuating the entry block "Hand out key" (41) (as required by claim 87) (see Fig. 5, 530-540);

checking in the branching block "Game time ended" (39), if the game time has ended (as required by claim 87) (see abstract, which discloses a final hand, where a final hand determines if the game has ended).

The network of gaming machines of Gauselmann would have motivation to use video draw poker game play methods of Walker in order to attract players that enjoy playing poker.

Thus, it would have been obvious to a person of ordinary skill in the art at the time of the invention to combine the gaming machines of Gauselmann with the poker gaming methods of Walker in order to provide patrons with exciting game play required to win a payout.

Response to Arguments

15. Applicant's arguments filed 12/31/09 have been fully considered but they are not persuasive.

16. Applicants states that neither Gauselmann nor Walker reference teaches or suggest the following remarks:

(1) regarding claim 38, "monitoring the total playing time";

(2) regarding claim 39, switching simultaneously the coin actuated entertainment automats disposed in the network into a common supplemental game when a predetermined value of a common jackpot is surpassed;

(3) regarding claim 40, The clause determines if a game has ended in a branching block "Game time ended?" (39) at the active entertainment automat. The

present clause performs a decision if the game time has ended or not. In clear contrast the reference Walker et al. teaches a final hand, but no determination if the game time has ended;

(4) regarding claim 84, (a) applicant respectfully submits that a presence of a power amplifier in a reference does not render obvious the method step actuating a power switch of each entertainment automat (1); (b) claim 84 requires that monitoring takes place if all slave automats are ready and have returned an okay signal, which patentably distinguishes claim 84 from the references applied

(5) regarding claim 86, The reference Gauselmann teaches that the gambling machines 2a and 2c include a video screen for the display of winning symbol combinations. (a) Claim 86 in contrast requires determining a game result of the symbol combination, and (b) claim 86 in contrast requires displaying a game result of the symbol combination. (c) "The reference Walker et al shows in Fig. 2, 125 hold keys. Claim 86 requires checking which operational element (3) was actuated in case of actuation of "Hand out key" or "Hold key". Applicant urges that there is a substantial difference between the teaching of Walker et al of the existence of hold keys and claim 86 requiring checking which operational element (3) was actuated." (d) "In case of actuation of an operational element according to entry block "Hand out key" (41) displaying five next to each other disposed card symbols with the symbol display device (2). The reference Walker et al. fails to show a Hand out key displaying five next to each other disposed card symbols.". (e) The abstract of the reference Walker et al. fails to teach or suggest any card storage. (f) requires returning control from the branching

block "maximum winning value" (45) to the branching block "Game time ended?" (39) when the maximum winning value is not reached. No such feature is seen in the reference Walker et al.

In addition, applicant states the following:

(6) There are many differences between the Gauselmann reference and the Walker reference that a person of ordinary skill in the art would not know to combine and what not to combine. There is no suggestion in the reference Gauselmann as to how to incorporate the video poker machine of the Walker et al and vice versa there is no suggestion in reference Walker et al as to expanding the video poker machine of the reference Walker et al into the shared jackpot system of the Gauselmann reference;

(7) Combining the gaming machine network of Gauselmann with the poker gaming machines of Walker et al would not be feasible since the poker gaming machines of Walker et al lack a compatible interface to the gaming machine network of the reference Gauselmann.

However, regarding the following above remarks:

(1) Lacking distinguishing features, Gauselmann discloses a time period where the game play is monitored, thus, the "monitoring the total playing time" claim limitation is met;

(2) Gauselmann discloses "In case a jackpot trigger value is present, a command sequence is sent to all linked gambling machines. At the same time there occurs a final game in the

gambling machines based on the command sequence.”, which meets the above corresponding claim limitation;

(3) Lacking distinguishing features, Walker discloses the determination of whether a player's hand is final or not, when it is determined that the hand is final it is determined that the game time has ended, otherwise, if no final hand, then game time has not ended;

(4) (a) Lacking distinguishing features, Gauselmann discloses a power amplifier which is interpreted as a power switch; furthermore, Gauselmann discloses electronic gaming machines which inherently have power switches in order to generate power to the gaming device; (b) Lacking distinguishing features, Gauselmann discloses other communication boards confirm the receipt of a signal when designating devices as master and slaves, see col. 6, 62-67 to col. 7, 1-19;

(5) (a) and (b) Lacking distinguishing features, Gauselmann discloses displaying winning symbol combinations in two gaming devices which are the same as the respective claim limitations because it is determined that a game result is a winning symbol combination, and it is explicitly disclosed that the winning symbol combinations are displayed; (c) and (d) Walker discloses hold keys, 125, and a draw key, 127, where incorporated with the CPU, central processing unit, recognizes when at least one of the keys have been pressed by a player and in cases when at least one the keys have been pressed the CPU in communication with a random number generator provides the proper associated number cards; (e) Walker explicitly discloses “Processing continues at step 520 where CPU 102 receives a random number

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from random number generator 108 via line 108A. As is well known, the random number acts as a seed from which a player will be dealt an initial hand of cards from a standard deck of fifty-two playing cards.” which meets the respective claim limitations regarding card storage;. (f) Lacking distinguishing features, Walker discloses “royal flush” which is interpreted as maximum winning value, where after a determination is made whether or not the “royal flush” has been achieved by a player, it is determined whether or not the game play time of the poker game has ended;

(6) and (7) A person of ordinary skill in the art would have motivation to combine the teachings of Gauselmann and Walker references in order to attract people who are interested in playing a poker progressive jackpot game.

Examiner's Note

17. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: “The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims “define a patentable invention” without specifically pointing out how the language of the claims is patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, “The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims.” Applicant should also specifically point out the support for any amendments

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made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02.

The "disclosure" includes the claims, the specification and the drawings.

Conclusion

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAMON PIERCE whose telephone number is (571)270-1997. The examiner can normally be reached on 8AM-4PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dmitry Suhol can be reached on 571-272-4430. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

19. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dmitry Suhol/
Supervisory Patent Examiner, Art
Unit 3714

DJP